

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of the Commission's Rules)	PR Docket No. 92-257
Concerning Maritime Communications)	
)	
Petition for Rule Making filed by)	RM-9664
Regionet Wireless License, LLC)	

THIRD MEMORANDUM OPINION AND ORDER

Adopted: October 31, 2003

Released: November 18, 2003

By the Commission:

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I. INTRODUCTION AND EXECUTIVE SUMMARY

1. In this *Third Memorandum Opinion and Order* we address petitions for reconsideration of the *Second Memorandum Opinion and Order and Fifth Report and Order* in this proceeding,¹ and of certain administrative actions taken pursuant to the *Second Memorandum Opinion and Order and Fifth*

¹ Amendment of the Commission's Rules Concerning Maritime Communications, *Second Memorandum Opinion and Order and Fifth Report and Order*, PR Docket No. 92-257, 17 FCC Rcd 6685 (2002) (*Second MO&O and Fifth R&O*). Each major part will be referred to in the text herein, as applicable, as either the *Second Memorandum Opinion and Order*, or the *Fifth Report and Order*.

Report and Order. The reconsideration petitions pertain to the Commission's decisions regarding the licensing approach for spectrum allotted to Automated Maritime Telecommunications System (AMTS)² stations, including application processing issues and the incumbent co-channel interference protection standard. We have reviewed the reconsideration petitions and generally affirm the Commission's decisions in the *Second Memorandum Opinion and Order* and *Fifth Report and Order*. Based on the record now before us, however, we believe that reconsideration of the AMTS incumbent co-channel interference protection standard adopted in the *Fifth Report and Order* is warranted. Specifically, we conclude that adoption of a larger interference contour will better preserve AMTS incumbent systems' current operating parameters and afford licensees with an opportunity to construct fill-in stations. Our decisions in this *Third Memorandum Opinion and Order* are in furtherance of the Commission's ongoing goal of establishing a regulatory framework under which the effectiveness and efficiency of maritime communications is improved.

II. BACKGROUND

2. On November 16, 2000, the Commission suspended acceptance of applications for new AMTS licenses, applications to modify existing AMTS licenses, and amendments to applications for new licenses or modifications.³ With respect to applications that were pending as of November 16, 2000, the Commission suspended the processing of those applications that were mutually exclusive with other applications, or were still within the relevant period for filing competing applications.⁴ The Commission indicated that pending applications meeting the above criteria would be held in abeyance until the conclusion of the proceeding, whereupon it would determine, in accordance with such new rules as are adopted, whether to process or return any such pending applications.⁵

3. In a January 8, 2001 petition for reconsideration of the November 16, 2000 processing suspension, Warren C. Havens (Havens) argued that the Commission should process those applications that comply with the AMTS service coverage and broadcast television interference protection requirements, and dismiss any mutually exclusive applications that do not comply with such requirements.⁶ In the *Second Memorandum Opinion and Order*, the Commission rejected Havens's argument, concluding that suspension of acceptance and processing of AMTS applications was warranted in order to facilitate the orderly and effective resolution of the matters pending in the proceeding.⁷ Further, it indicated that maintaining the processing suspension would enable it to weigh the costs and benefits of the existing regulatory framework against its rule proposals in the proceeding.⁸ The Commission also rejected a May 25, 2001 request by Havens that the Commission dismiss certain Mobex

² An AMTS is a specialized system of coast stations providing integrated and interconnected marine voice and data communications, somewhat like a cellular phone system, for tugs, barges, and other vessels on waterways. Amendment of Parts 2 and 80 of the Commission's Rules Applicable to Automated Maritime Telecommunications Systems (AMTS), *First Report and Order*, RM-5712, 6 FCC Rcd 437, 437 ¶ 3 (1991).

³ Amendment of the Commission's Rules Concerning Maritime Communications, *Fourth Report and Order and Third Further Notice of Proposed Rule Making*, PR Docket No. 92-257, 15 FCC Rcd 22585, 22621 ¶ 76 (2000) (*Fourth R&O and Third FNPRM*). Each major part will be referred to in the text herein, as applicable, as either the *Fourth Report and Order*, or the *Third Further Notice of Proposed Rule Making*.

⁴ *Id.* at 22622 ¶ 78.

⁵ *Id.*

⁶ See *Second MO&O and Fifth R&O*, 17 FCC Rcd at 6692 ¶ 14.

⁷ *Id.* at 6692 ¶ 15.

⁸ *Id.*

Communications, Inc. (Mobex)⁹ AMTS applications that Havens contended were defective.¹⁰ The Commission reasoned that dismissing these Mobex applications, and then processing Havens's mutually exclusive applications, would be inconsistent with its processing suspension, and would undermine one of the purposes of the processing suspension (*i.e.*, to prevent the further license grants under the current rules, which could lead to results inconsistent with the decisions ultimately made in this rulemaking proceeding).¹¹

4. In his June 4, 2001 Request for Declaratory Ruling, Havens argued that Section 309(d)(2) of the Communications Act of 1934, as amended, (Act)¹² does not permit the dismissal of those pending applications against which petitions to deny have been filed, but instead requires that the Commission either grant the applications and dismiss the petition, or, as provided in Section 309(e),¹³ designate the applications for hearing.¹⁴ The Commission rejected this argument in the *Second Memorandum Opinion and Order*, stating that Sections 309(d)(2) and (e) require a comparative hearing when there is a material question of fact regarding an application, and, thus, are inapplicable in a competitive bidding context.¹⁵

5. Additionally, the Commission rejected Havens's argument that in circumstances in which a petition to deny was filed against one or more mutually exclusive applications that were subject to the processing suspension, Section 309(j)(6)(E)¹⁶ requires the Commission to first address the petition to deny because a grant of the petition could resolve the mutual exclusivity, thus enabling the surviving application(s) to be processed.¹⁷ In a March 11, 2002 supplement to his June 4, 2001 Request for Declaratory Ruling, Havens requested a declaratory ruling on whether the Section 309(j)(6)(E) obligation to avoid mutual exclusivity, as well as Section 1.934 of the Commission's Rules,¹⁸ dictate that AMTS applications show compliance with the AMTS service coverage and broadcast television interference protection requirements, before they can be accepted for filing.¹⁹

6. In the *Fifth Report and Order*, the Commission determined that the public interest would be served by licensing AMTS spectrum²⁰ through geographic area licensing.²¹ In this connection, the

⁹ Havens's argument addressed AMTS applications that were filed by Mobex, Regionet Wireless License, LLC (Regionet), and Waterway Communications System, LLC (Watercom). Because both Regionet and Watercom are now controlled by Mobex, we will hereinafter refer to applications filed by these three entities as Mobex applications.

¹⁰ See *Second MO&O and Fifth R&O*, 17 FCC Rcd at 6694 ¶¶ 19-20.

¹¹ *Id.* at 6694 ¶ 20.

¹² 47 U.S.C. § 309(d)(2).

¹³ 47 U.S.C. § 309(e).

¹⁴ See *Second MO&O and Fifth R&O*, 17 FCC Rcd at 6693 ¶ 18.

¹⁵ *Id.*

¹⁶ Section 309(j)(6)(E) states that the Commission has an "obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means to avoid mutual exclusivity in applications and licensing proceedings." 47 U.S.C. § 309(j)(6)(E).

¹⁷ See *Second MO&O and Fifth R&O*, 17 FCC Rcd at 6693 ¶ 18.

¹⁸ 47 C.F.R. § 1.934.

¹⁹ Supplement to Petition for Declaratory Ruling at 3-5.

²⁰ There are two frequency groups of one MHz each (.5 MHz for coast transmit and .5 MHz for ship transmit) in the 217-220 MHz band available for assignment to AMTS stations (47 C.F.R. § 80.385 (a)(2)) to use for voice, facsimile, and radioteletypewriter communications (47 C.F.R. § 80.479(a)). See *Second MO&O and Fifth R&O*, 17 FCC Rcd at 6695 ¶ 22.

Commission also reasoned that Section 309(j)(6)(E) merely requires that it take certain measures, when it is in the public interest, to avoid mutual exclusivity within the framework of existing, not outmoded, licensing policies.²² The Commission concluded that it would be contrary to the public interest to continue to process site-based applications, including the review and resolution of petitions to deny those applications.²³ The *Second Memorandum Opinion and Order and Fifth Report and Order* was adopted on March 13, 2002, and did not address Havens's March 11, 2002 supplement.

7. In the *Fifth Report and Order*, the Commission adopted various technical rules governing AMTS geographic licensees. It concluded that geographic licensees would be required to locate their base stations at least 120 kilometers from the base stations of co-channel incumbents, except that geographic licensees may on a case-by-case basis be permitted to locate their base stations closer if they provide 10 dB protection to the incumbent's predicted 38 dBu service contour.²⁴ Mobex and Paging Systems, Inc. (PSI) argued in their comments to the *Third Further Notice of Proposed Rule Making* in this proceeding that incumbent systems should be protected on the basis of a 17 dBu service contour because they were authorized at that level.²⁵ The Commission rejected that argument in the *Fifth Report and Order*, explaining that authorizations of incumbent AMTS stations were not granted for a specific service contour.²⁶ The Commission indicated that it selected the 38 dBu standard because requiring protection to a larger service contour, as some proponents²⁷ suggested, is unnecessary and would reduce the area that could be served by licenses without any corresponding protection to existing service.²⁸ It indicated that its engineering analysis of incumbent systems that were designed on the basis of a larger service contour, such as 17 dBu, demonstrates that system continuity of service will not be severed (*i.e.*, that it will not be possible for a licensee to interpose a facility between co-system incumbent stations) if the incumbent is protected to a 38 dBu service contour.²⁹

8. As part of the transition to geographic area licensing reflected in the *Fifth Report and Order*, the Commission declared that, effective April 8, 2002 (*i.e.*, the release date the *Second Memorandum Opinion and Order and Fifth Report and Order*), all applications to use AMTS spectrum, the processing of which was suspended, would be dismissed.³⁰ In a letter dated April 9, 2002,³¹ the Wireless Telecommunications Bureau (Bureau) notified Havens that his pending AMTS applications that were subject to the processing suspension³² had been dismissed on April 8, 2002. On April 12, 2002, the

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²¹ *Id.* at 6696 ¶ 24.

²² *Id.* at 6694 ¶ 18.

²³ *Id.*

²⁴ *Second MO&O and Fifth R&O*, 17 FCC Rcd at 6700-01 ¶¶ 32-33.

²⁵ *Id.* at 6700 ¶ 32.

²⁶ *Id.*

²⁷ Proponents had not presented technical data demonstrating that the suggested standard of 38 dBu, which also applies to the adjacent 220-222 MHz band, would not provide sufficient protection. AMTS stations operate in the 217-220 MHz band. See 47 C.F.R. § 80.385(a)(2).

²⁸ *Second MO&O and Fifth R&O*, 17 FCC Rcd at 6700-01 ¶¶ 32-33.

²⁹ *Id.*

³⁰ *Id.* at 6720 ¶ 83, 6721 ¶ 90.

³¹ Initiated through the Commission's Universal Licensing System (ULS).

³² FCC File Nos. 853032-042, 853044-046, 853057-060, 853070-072, 853175-176, 853190-193, 853252-258, 853460-461, 853562-576, 853578-581, 853611, 853615, 853667-677, 855043.

Bureau's Public Safety and Private Wireless Division (Division) dismissed as moot all of Havens's filings associated with those AMTS applications, including his March 11, 2002 supplement to his June 4, 2001 Request for Declaratory Ruling.³³

9. On May 8, 2002, Havens filed a petition for reconsideration of the Commission's dismissal of his AMTS applications that were subject to the processing suspension, as well as the Commission's decisions in the *Second Memorandum Opinion and Order* relating to the processing suspension.³⁴ On May 13, 2002, Havens filed an errata to his May 8, 2002 petition for reconsideration,³⁵ and also filed a petition for reconsideration of the dismissal of his March 11, 2002 supplement.³⁶

10. The *Second Memorandum Opinion and Order and Fifth Report and Order* was published in the Federal Register on July 25, 2002.³⁷ On August 26, 2002, Havens filed another petition for reconsideration.³⁸ This petition seeks reconsideration of the Commission's decision to dismiss one of his AMTS applications.³⁹ The August 26 Petition also asks the Commission to reconsider its decision to auction AMTS spectrum that has not yet been licensed.⁴⁰ Instead of auctioning AMTS spectrum, the petition seeks to have the spectrum included for use in a multi-band radio service for public safety and critical infrastructure entities—namely, his proposed multi-band (217-225 MHz, 902-928 MHz, 4.9 GHz, and 5.9 GHz) Advanced Technology Land Infrastructure and Safety Service (ATLIS).⁴¹ In addition, petitions filed by Mobex⁴² and PSI⁴³ seek reconsideration of the AMTS incumbent co-channel

³³ Letter, dated April 12, 2002, from D'wana R. Terry, Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, to Warren C. Havens, at 2.

³⁴ Havens Petition for Reconsideration (filed May 8, 2002) at 3 (May 8 Petition). On May 15, 2002, Mobex filed an opposition. Mobex Opposition to Petition for Reconsideration (filed May 15, 2002). On May 30, 2002, Havens filed a reply. Havens Reply to Opposition to Petition for Reconsideration (filed May 30, 2002).

³⁵ Havens Petition for Reconsideration Errata (filed May 13, 2002) (Errata Petition).

³⁶ Havens Petition for Reconsideration (filed May 13, 2002) (May 13 Petition). On May 17, 2002, Mobex filed an opposition. Mobex Opposition to Petition for Reconsideration (filed May 17, 2002). On June 6, 2002, Havens filed a reply. Havens Reply to Opposition to Petition for Reconsideration (filed June 6, 2002).

³⁷ See 67 Fed. Reg. 48560 (2002).

³⁸ Havens Petition for Reconsideration (filed Aug. 26, 2002) (August 26 Petition). On September 13, 2002, Mobex filed an opposition. Mobex Opposition to Petition for Reconsideration (filed Sept. 13, 2002). On October 3, 2002, Havens filed a reply. Havens Reply to Opposition to Petition for Reconsideration (Oct. 3, 2002). On October 9, 2002, Havens filed a supplement to his reply, as well as an errata to the supplement. Havens Supplement to Reply to Opposition to Petition for Reconsideration (Oct. 9, 2002); Havens Supplement to Reply to Opposition to Petition for Reconsideration Errata (Oct. 9, 2002). On October 15, 2002, Mobex filed a motion to accept unauthorized pleading, as well as a reply to Havens's supplement. Mobex Motion to Accept Unauthorized Pleading (filed Oct. 15, 2002); Mobex Reply to Supplement to Opposition to Petition for Reconsideration (filed Oct. 15, 2002). On October 23, 2002, Havens filed a response to Mobex's reply to his supplement. Havens Response to Filings by Mobex Dated October 15, 2002 (filed Oct. 23, 2002).

³⁹ August 26 Petition at 1, 7-8.

⁴⁰ *Id.* at 2.

⁴¹ *Id.* at 3, Attachment.

⁴² Mobex Petition for Reconsideration at 9-12, 23-24 (filed Aug. 23, 2002) (Mobex August 23 Petition). On August 23, 2002, Mobex also requested waiver of 47 C.F.R. § 1.429(d) because it believed that it may have exceeded the twenty-five-page limit for petitions for reconsideration. We do not believe that a waiver grant is required because the petition's attached exhibits, which reflect information of a factual nature, are viewed separately and will not be included with the twenty-four-page petition when determining compliance with 47 C.F.R. § 1.429(d). On September 23, 2002, Havens filed an opposition. Havens Opposition to Petition for Reconsideration (Sept. 23, 2002). On October 1, 2002, PSI filed a reply. PSI Reply to Opposition to Petition for Reconsideration (filed Oct. 1, 2002).

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interference protection standard adopted in the *Second Memorandum Opinion and Order and Fifth Report and Order*.⁴⁴

III. DISCUSSION

A. Procedural Issues

11. As an initial matter, Mobex argues that Havens's May 8 Petition is procedurally defective on several grounds. First, Mobex argues that to the extent that Havens is petitioning for reconsideration of the dismissal of his applications, the petition needed to be addressed to the Bureau, rather than the Commission, because it indicates that the Bureau's April 9, 2002 dismissal letter established a thirty-day period for filing a petition for reconsideration.⁴⁵ Mobex also argues that to the extent that Havens is seeking reconsideration of the *Second Memorandum Opinion and Order*, his petition was premature because it was filed before the *Second Memorandum Opinion and Order* was published in the Federal Register.⁴⁶

12. We conclude that Havens's May 8 Petition was timely filed and properly addressed to the Commission. First, we find that the Commission, not the Bureau, is the proper recipient of the subject petition for reconsideration because the Commission ordered that the applications be dismissed, whereas the Bureau's April 9, 2002 letter was ministerial in nature because it merely implemented the Commission's earlier decision. Moreover, we do not find Havens's petition to be premature; rather, it was timely filed. Our rules specifically provide that petitions for reconsideration of "[l]icensing . . . decisions with respect to specific parties that may be associated with or contained in rulemaking documents" must be filed within thirty days of the item's release date, rather than within some period related to Federal Register publication.⁴⁷ Because the May 8 Petition was filed within thirty days of the April 8, 2002 release date of the *Second Memorandum Opinion and Order and the Fifth Report and Order*, it was timely.

13. Mobex also argues that Havens's May 8 Petition should be dismissed pursuant to Section 1.429(d)⁴⁸ because it exceeds the Commission's twenty-five double-spaced page limitation for such documents.⁴⁹ Havens's May 8 Petition consists of eighteen pages of double-spaced petition text, and a

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2002). On October 7, 2002, Mobex filed a reply. Mobex Reply to Opposition to Petition for Reconsideration (filed Oct. 7, 2002). On October 7, 2002, Havens filed a supplement to his opposition. Havens Supplement to Reply to Opposition to Petition for Reconsideration (filed Oct 7, 2002). On October 15, 2002, Mobex filed a reply to this supplement. Mobex Reply to Supplement to Opposition to Petition for Reconsideration (filed Oct. 15, 2002). We note that the Commission's rules do not provide parties with the authority to file supplements to oppositions. Because Havens did not request leave to file this October 7, 2002 supplement, and did not offer an explanation as to why he was unable to include this supplemental information in his opposition, the supplement is procedurally defective and, therefore, dismissed. Consequently, we also dismiss, as moot, Mobex's October 15, 2002 reply to the supplement.

⁴³ Paging Systems Petition for Reconsideration at 13 (filed Aug. 23, 2002) (Paging August 23 Petition).

⁴⁴ *Second MO&O and Fifth R&O*, 17 FCC Rcd at 6700-01 ¶¶ 32-33.

⁴⁵ Mobex Opposition to May 8 Petition at 2-3.

⁴⁶ *Id.*

⁴⁷ See 47 C.F.R. §§ 1.4(b)(1) note, 1.4(b)(2).

⁴⁸ 47 C.F.R. § 1.429(d) (petitions for reconsideration should not exceed twenty-five double-spaced pages).

⁴⁹ Mobex Opposition to May 8 Petition at 4.

sixteen-page attachment. Mobex contends that the attachment is argumentative in nature, and should be included in the determination of the petition's length.⁵⁰ Havens replies that the attachment is factual in nature, and should not count toward the twenty-five-page limit.⁵¹ The attachment, *inter alia*, charts the mutually exclusive Havens and Mobex applications, as well as the defects that Havens connects to each Mobex application.⁵² The attachment also summarizes previous Bureau and Division decisions to dismiss defective AMTS applications.⁵³ Although the attached exhibits contain some information of an argumentative nature, we find that they mostly lend factual support to the petition. Moreover, even if we were to include the argumentative portions of the attached exhibits when determining the length of the petition, the twenty-five-page limit still would not be exceeded. We therefore conclude that the May 8 Petition will not be dismissed due to its number of pages.

14. As noted above, on May 13, 2002, Havens filed the Errata Petition, which purports to provide errata to the May 8 Petition. We agree with Mobex that Havens's Errata Petition is not limited to corrections and clarifications.⁵⁴ Because the Errata Petition presents new arguments regarding why the Commission should reinstate certain Havens AMTS applications that were dismissed on April 8, 2002,⁵⁵ we will treat the petition as a supplement to his May 8 Petition. Any supplements were required to have been submitted within thirty days of April 8, 2002.⁵⁶ Because the supplement was not filed until May 13, 2002, and Havens has not explained why his supplemental arguments could not have been presented in the May 8 Petition, we dismiss Havens's Errata Petition as late-filed.

15. Similarly, Havens's August 26 Petition presents additional arguments regarding why one particular Havens AMTS application that was dismissed on April 8, 2002 should be reinstated.⁵⁷ To the extent the August 26 Petition relates to this particular application, we will treat it as a supplement to Havens's May 8 Petition. Under the circumstances, all supplements were required to be submitted within thirty days of April 8, 2002.⁵⁸ Because the petition for reconsideration was not submitted until August 26, 2002, and Havens has not explained why this supplemental argument could not have been presented in the May 8 Petition, we dismiss Havens's August 26 Petition as late-filed to the extent that the petition relates to this particular application.

⁵⁰ *Id.*

⁵¹ Reply to Opposition to May 8 Petition at 8-9. Materials that are submitted with and factually support a pleading will not be counted in determining the length of the pleading. *See* 47 C.F.R. § 1.48(a); *see also* James A. Kay, Jr., *Decision*, WT Docket No. 94-147, 17 FCC Rcd 1834, 1837-38 ¶ 12 (2002); *see also* Amendment of Section 73.606(b), Table of Allotments Television Broadcast Stations, *Memorandum Opinion and Order*, MM Docket No. 89-68, 5 FCC Rcd 6566, 6569 n.6 (1990).

⁵² May 8 Petition at 19-21.

⁵³ *Id.* at 22-28.

⁵⁴ Mobex Opposition to Supplemented Petition for Reconsideration at 3.

⁵⁵ Errata Petition at 5, 16-17.

⁵⁶ *See* 47 C.F.R. §§ 1.4(b)(1) note, 1.4(b)(2), 1.429(d).

⁵⁷ In his January 8, 2001 petition for reconsideration, Havens argued that the processing of his Keota, Oklahoma, application should not have been suspended on November 16, 2000 because it was placed on a later public notice than the other concurrently filed applications in his proposed McClellan/Kerr/Arkansas River system. *See Second MO&O and Fifth R&O*, 17 FCC Rcd at 6692-93 ¶ 17. In the *Second MO&O*, the Commission explained that the Keota application would have been suspended even if it had gone on public notice earlier, because other applications for the proposed McClellan/Kerr/Arkansas River system were mutually exclusive with Mobex applications. *Id.* In his August 26 Petition, Havens argues that grant of his May 8 Petition would also necessitate reconsideration of the Commission's decision regarding the Keota application. August 26 Petition at 7.

⁵⁸ *See* 47 C.F.R. §§ 1.4(b)(1) note, 1.4(b)(2), 1.429(d).

B. Havens Petitions for Reconsideration

16. As indicated above, on April 8, 2002, the Commission dismissed AMTS applications the processing of which had been suspended because they were mutually exclusive with other applications and/or the relevant filing period had not expired as of November 16, 2000. Regarding the mutually exclusive Havens and Mobex applications that were dismissed on April 8, 2002, Havens contends in his May 8 Petition that the Mobex applications should never have been accepted for filing⁵⁹ because of non-compliance with the AMTS service coverage⁶⁰ and broadcast television interference protection requirements.⁶¹ He argues that the Bureau was obligated under Section 309(j)(6)(E) of the Act and Section 1.934 of the Commission's Rules to avoid mutual exclusivity by ensuring that the applications complied with certain threshold qualifications before accepting those applications for filing.⁶² He argues that if the Bureau had closely examined the Mobex applications before accepting them for filing, it would have dismissed them for non-compliance with the AMTS service coverage and broadcast television interference protection requirements, thereby avoiding mutual exclusivity and enabling his applications to be processed.⁶³

17. Assuming *arguendo* that Havens may object now to the Bureau's decisions in 2000 and earlier to accept for filing the Mobex applications at issue, we do not find his argument to be persuasive. Contrary to Havens's contention, Section 1.934 did not obligate the Bureau to automatically dismiss Mobex applications that did not comply with certain technical AMTS requirements prior to accepting them for filing. Section 1.934 does not mandate dismissal; rather it is discretionary, *i.e.*, Section 1.934(d) states that the Commission *may* dismiss an application that it finds to be defective.⁶⁴ While our rules clearly provide that a defective application may be dismissed upon receipt, an application also may be accepted for filing, then dismissed as defective later upon subsequent review and processing.⁶⁵ The Commission's stated practice with respect to all services is to automatically dismiss applications that fail to comply with signature, filing fee and timeliness requirements.⁶⁶ Applications with other defects may be returned to the applicant for correction or dismissed after being accepted for filing, depending on the circumstances. Consequently, we find that the Bureau did not err in accepting for filing the Mobex applications that were mutually exclusive with Havens's applications. We therefore deny Havens's May 8 Petition, which seeks reconsideration of the *Second Memorandum Opinion and Order* and the *Fifth Report and Order*.

⁵⁹ May 8 Petition at 6-10.

⁶⁰ See 47 C.F.R. § 80.474(a).

⁶¹ See 47 C.F.R. § 80.215(h).

⁶² May 8 Petition at 5-7.

⁶³ *Id.*

⁶⁴ 47 C.F.R. § 1.934(d) (emphasis added).

⁶⁵ See 47 C.F.R. § 1.933(b) ("Acceptance for filing shall not preclude the subsequent dismissal of an application as defective"). Indeed, in all of the cases Havens cites as evidence of the Bureau's practice regarding AMTS applications that do not conform with the technical and substantive requirements in the AMTS rules, *see* May 8 Petition at 22-28, the Bureau accepted the application for filing, and dismissed it only after subsequent review and processing found it to be defective.

⁶⁶ The Commission adopted Section 1.934 in Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Report and Order*, WT Docket No. 98-20, 13 FCC Rcd 21027, 21068 ¶ 90 (1998) ("we will automatically dismiss any application that is defective because the applicant failed to sign the application, failed to pay the required filing fee, or filed outside the applicable filing window. These defects are fatal to the consideration of the application.").

18. We also deny Havens's May 13 Petition,⁶⁷ which requests reconsideration of the Division's dismissal of his March 11, 2002 supplement to his June 4, 2001 Request for Declaratory Ruling. Havens argues that the Division erred in that it dismissed the March 11, 2002 supplement as moot simply because the June 4, 2001 Request for Declaratory Ruling had been dismissed in the *Fifth Report and Order*.⁶⁸ He argues that the supplement raised issues not addressed in the June 4, 2001 Request for Declaratory Ruling or the Commission's denial of that petition in the *Second Memorandum Opinion and Order*, and that he specifically requested that the supplement be addressed separately if it was filed too late to be reviewed alongside the June 4, 2001 petition.⁶⁹ We disagree. Havens's argument overlooks the fact that in the *Second Memorandum Opinion and Order*, the Commission, in addition to denying the June 4, 2001 petition, had also dismissed the pending Havens and Mobex applications. Therefore, the Division correctly concluded that Havens's supplemental petition for declaratory ruling regarding the proper treatment of those applications was moot. Furthermore, we note that the arguments that Havens raised in his March 11, 2002 supplement⁷⁰ were subsequently raised in the May 8 Petition, and thus have been addressed herein.

19. Finally, in the part of Havens's August 26 Petition that we have not dismissed as a late-filed supplement to his May 8 Petition,⁷¹ Havens proposes the integration of unassigned AMTS spectrum into a multi-band radio service to be used by public safety and critical infrastructure entities. We note that Havens has advanced his ATLIS proposal in several Commission proceedings.⁷² We believe that the substance of Havens's ATLIS proposal would be best addressed in a separate proceeding more oriented to the issues he raises. Therefore, we will not address the issue raised in the remainder of the August 26 Petition in this proceeding.

C. Mobex and PSI Petitions for Reconsideration

20. In the Mobex August 23 Petition and the PSI August 23 Petition, Mobex and PSI seek reconsideration of the co-channel interference protection standard adopted in the *Fifth Report and Order*. They contend that if protection of 10 dB is provided to the incumbent's predicted 38 dBu contour, permitting licensees to locate their base stations within 120 kilometers from the base stations of co-channel incumbents will enable a licensee to sever an incumbent AMTS system's continuity of service (*i.e.*, that it will be possible for a geographic licensee to interpose a facility between co-system incumbent stations).⁷³ They argue, as they did in their respective comments to the *Third Further Notice of Proposed Rule Making*, that we should instead require geographic area licensees to provide 18 dB protection to the incumbent's predicted 17 dBu contour.⁷⁴ Based on additional information submitted by Mobex, we now conclude, as explained below, that the standard should be modified to require geographic area licensees to provide 18 dB protection to the incumbent's predicted 38 dBu contour.

⁶⁷ See note 36, *supra*.

⁶⁸ See *supra* ¶¶ 4-6.

⁶⁹ May 13 Petition at 1.

⁷⁰ Supplement to the Petition for Declaratory Ruling at 3-5.

⁷¹ See *supra* ¶ 15.

⁷² See, e.g., Havens Comments in RM-10403 (filed May 16, 2002); Havens Reply Comments in WT Docket No. 00-32 (filed Sept. 4, 2002); Havens Reply Comments in ET Docket No. 02-135 (filed Sept. 6, 2002); Havens Comments in WT Docket No. 02-55 (filed Sept. 23, 2002).

⁷³ Mobex August 23 Petition at 7-10, 19-22; PSI August 23 Petition at 4-6.

⁷⁴ Mobex August 23 Petition at 7-10, 19-22; PSI August 23 Petition at 5-6; see *Second MO&O and Fifth R&O*, 17 FCC Red at 6700 ¶¶ 32-33.

21. Mobex argues that we should establish a 17 dBu service contour for incumbent AMTS licensees because this is the standard to which incumbents were licensed.⁷⁵ However, as the Commission explained in the *Fifth Report and Order*, when Mobex and PSI were licensed, our rules did not specify a service area or co-channel interference protection standard for AMTS stations.⁷⁶ Systems were licensed upon a showing that the stations would provide “continuity of service” and meet the other coverage requirements set forth in the rules.⁷⁷ In determining whether a proposed system demonstrated the required coverage or would interfere with another licensee, Commission staff took the contours that applicants provided with their applications into consideration, but the ultimate decision was based on the Commission’s analysis of the requested technical parameters. In view of the fact that our rules did not specify a service area standard and site-based incumbents are licensed at the same power level, antenna height, and other technical parameters as they were prior to the *Fifth Report and Order*, we find no private property has been taken here by the government. Therefore, we reject PSI’s contention that the Commission reduced a protected service area and thus, is guilty of an unlawful taking pursuant to the Takings Clause of the Fifth Amendment of the United States Constitution.⁷⁸

22. Mobex and PSI give great weight to the fact that the 17 dBu service contour is used by another Part 80 maritime service, and they seem to suggest that less consideration should be given to the 38 dBu service contour because it is used by a Part 90 land-based service.⁷⁹ We do not share that assessment. The 17 dBu service contour in Part 80 of the Commission’s rules⁸⁰ clearly applies only to VHF (156-162 MHz) stations,⁸¹ and not to AMTS stations (which, as noted above, did not have a specified service contour).

23. Mobex also contends that a 17 dBu service contour is necessary to enable incumbents to continue to meet their regulatory requirement of “continuity of service.”⁸² As Havens notes in his opposition to the Mobex and PSI petitions,⁸³ however, the *Fifth Report and Order* eliminated the requirement that AMTS systems provide continuity of service along a waterway.⁸⁴ Nonetheless, the

⁷⁵ Mobex August 23 Petition at 9-10.

⁷⁶ *Second MO&O and Fifth R&O*, 17 FCC Rcd at 6699 ¶ 31.

⁷⁷ *Id.* at 6700 ¶ 32.

⁷⁸ PSI’s constitutional takings argument is curious, *see* PSI August 23 Petition at 6-11, given that the service contour PSI now attacks as unconstitutional is the same contour that it used in its applications to demonstrate that its proposed systems would provide continuity of service. *See* Applications of Fred Daniel d/b/a Orion Telecom and Paging Systems, Inc., *Memorandum Opinion and Order*, 13 FCC Rcd 17474, 17478 n.19 (WTB PSPWD 1998).

⁷⁹ Mobex August 23 Petition at 17-18; PSI August 23 Petition at 3-4.

⁸⁰ 47 C.F.R. Part 80.

⁸¹ *See* 47 C.F.R. §§ 80.751, 80.755.

⁸² Mobex August 23 Petition at 7-8.

⁸³ Havens August 23 Opposition at 2-3.

⁸⁴ *See Second MO&O and Fifth R&O*, 17 FCC Rcd at 6737 (deleting the following language from the Commission’s then existing rules, 47 C.F.R. § 80.475(a): “AMTS applicants proposing to serve inland waterways must show how the proposed system will provide continuity of service along more than 60% of each of one or more navigable inland waterways. Inland waterways less than 240 kilometers (150 miles) long must be served in their entirety. AMTS applicants proposing to serve portions of the Atlantic, Pacific or Gulf of Mexico coastline must define a substantial navigational area and show how the proposed system will provide continuity of service for it.”). Further indicating that the Commission eliminated the continuity of service requirement, the *Fifth Report and Order* did not require incumbent AMTS licensees seeking to partition spectrum to maintain any minimum area of coverage, or otherwise

(continued....)

Commission recognized that it would be in the public interest to allow incumbent systems to continue to offer the services they currently provide.⁸⁵ The Commission concluded, based on a review of certain incumbent systems identified by commenters as susceptible to interference from geographic area licensees, that the 220 MHz band co-channel interference standard⁸⁶ was sufficient to prevent a geographic licensee from severing an incumbent system's continuity of service by interposing a facility between two co-system stations.⁸⁷ Mobex and PSI argued that 10 dB protection of the service contour was not sufficient.⁸⁸ The Commission rejected this argument because it was based on a study of the 800 MHz and 900 MHz bands, and the commenters neither provided technical information regarding the AMTS band nor explained why the 800/900 MHz analysis was applicable.⁸⁹ Mobex has submitted two engineering studies with its petition for reconsideration.⁹⁰ According to these studies, it appears that it will in fact be possible for a geographic licensee to interpose a facility between co-system incumbent base stations if the incumbent stations are provided 10 dB protection to their predicted 38 dBu service contour.⁹¹ Consequently, based on our review of this additional information, we are now persuaded that we should require geographic area licensees to provide 18 dB protection to an incumbent's service contour, in order to be assured of protecting incumbents' continuity of service.⁹²

24. Adoption of a 20 dBu interference contour (18 dB protection to a predicted 38 dBu service contour) will preserve incumbent systems' continuity of service, and will provide an incumbent with additional protected area in which fill-in stations may be constructed in instances where there are coverage holes,⁹³ thereby offering further assurance that an incumbent will be able to maintain and enhance its system's continuity of service. We conclude that this additional 8 dB of protection will reduce the risk of interference and thereby better enable the mobile ship stations to receive communications from the incumbent AMTS base stations. However, as noted above, we continue to believe that requiring protection of a larger service contour, such as Mobex and PSI's suggested 17 dBu contour, is unnecessary, and would

(...continued from previous page)

condition approval of partitioning requests on continued conformance with former Section 80.475(a). *See Second MO&O and Fifth R&O*, 17 FCC Rcd at 6709 ¶ 53; *see also* 47 C.F.R. § 80.60(a)(2).

⁸⁵ *Second MO&O and Fifth R&O*, 17 FCC Rcd at 6699 ¶ 31.

⁸⁶ *See* note 27, *supra*.

⁸⁷ *Second MO&O and Fifth R&O*, 17 FCC Rcd at 6700 ¶ 32.

⁸⁸ *Id.* at 6700 ¶ 33.

⁸⁹ *Id.* at 6700-01 ¶ 33.

⁹⁰ Allen Davidson, Davidson Consulting Engineering, Inc., Engineering Study (July 17, 2002); Raymond C. Trott, P.E., Trott Communications Group, Engineering Study (Aug. 15, 2002). PSI states that it concurs with and incorporates the engineering studies that were attached to Mobex's petition. PSI August 23 Petition at 1-2.

⁹¹ Allen Davidson, Davidson Consulting Engineering, Inc., Engineering Study (July 17, 2002); Raymond C. Trott, P.E., Trott Communications Group, Engineering Study (Aug. 15, 2002).

⁹² This conclusion applies only to the protection that geographic licensees must afford site-based incumbents. The co-channel interference protection standard between geographic licensees is based solely on signal strength at the geographic boundaries. *See* 47 C.F.R. § 80.479(b). Mobex and PSI do not seek any change in this standard and, in fact, supported the standard adopted by the Commission. *See Second MO&O and Fifth R&O*, 17 FCC Rcd at 6704 ¶ 39.

⁹³ *See* 47 C.F.R. § 80.475(a)(1), (b). Fill-in stations are stations that do not expand the interference contour of the system as a whole. *See Fourth R&O and Third FNPRM*, 15 FCC Rcd at 22593 n.46 (citing Implementation of Sections 3(n) and 332 of the Communications Act, *Further Notice of Proposed Rule Making*, GN Docket No. 93-252, 9 FCC Rcd 2863, 2873-74 ¶ 45 (1994)). Therefore, an incumbent can locate a fill-in station beyond the system's 38 dBu service contour, so long as the fill-in station does not expand the system's composite 20 dBu interference contour.

reduce the area that could be served by geographic licensees without any additional corresponding protection to incumbent systems.

IV. CONCLUSION

25. In the *Third Further Notice of Proposed Rule Making* in this proceeding, the Commission suspended the processing of AMTS site-based applications that as of November 16, 2000 were mutually exclusive with other applications and/or were still within the relevant filing period. The processing suspension allowed the Commission to weigh the costs and benefits of the existing regulatory framework against its proposed regulatory framework. On April 8, 2002, the Commission dismissed all pending site-based AMTS applications the processing of which had been suspended on November 16, 2000. This action was taken because the Commission had determined in the *Fifth Report and Order* that it was in the public interest to adopt a geographic area licensing approach for AMTS. In this *Third Memorandum Opinion and Order*, for the reasons already given, we affirm the dismissal of those applications, and the dismissal of Havens's March 11, 2002 supplement to his June 4, 2001 Request for Declaratory Ruling regarding those applications.

26. In the *Fifth Report and Order* in this proceeding, the Commission adopted a requirement that geographic area licensees may, on a case-by-case basis, be permitted to locate their base stations within 120 kilometers from the base stations of co-channel incumbents if they provide 10 dB protection to the incumbent's predicted 38 dBu service contour. Upon reconsideration, in this *Third Memorandum Opinion and Order*, we conclude that an 18 dB co-channel interference protection standard is required in order to ensure that a geographic area licensee does not interfere with an AMTS incumbent that seeks to maintain its system's continuity of service.⁹⁴

V. PROCEDURAL MATTERS

A. Supplemental Final Regulatory Flexibility Analysis

27. A Supplemental Final Regulatory Flexibility Analysis has been prepared for this *Third Memorandum Opinion and Order* and is included in Appendix A.

B. Paperwork Reduction Act

28. This *Third Memorandum Opinion and Order* does not contain any new or modified information collection.

C. Ordering Clauses

29. ACCORDINGLY, IT IS ORDERED that Part 80 of the Commission's Rules IS AMENDED as specified in Appendix B, effective 60 days after publication in the Federal Register.

30. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this *Third Memorandum Opinion and Order*,

⁹⁴ In addition, we take this opportunity to correct an error that occurred following the Federal Register publication of the *Fifth Report and Order*. As noted above, the Commission revised Section 80.475(a) to eliminate the continuity of service requirement. See note 83, *supra*. The Commission indicated no intention to change the engineering study and broadcaster notification requirements in Section 80.475(a)(1) and (2). Section 80.475(a)(1) and (2) were erroneously deleted, however, from the subsequent revision of the Code of Federal Regulations. We now correct this error, and restore the paragraphs.

including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

31. IT IS FURTHER ORDERED pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, that the petition for reconsideration filed by Warren C. Havens on May 8, 2002 IS DENIED.

32. IT IS FURTHER ORDERED pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, that the errata filed by Warren C. Havens on May 13, 2002 IS DISMISSED.

33. IT IS FURTHER ORDERED pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the petition for reconsideration filed by Warren C. Havens on May 13, 2002 IS DENIED.

34. IT IS FURTHER ORDERED pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, that the petition for reconsideration filed by Mobex Communications, Inc. on August 23, 2002 IS GRANTED IN PART AND DENIED IN PART to the extent set forth above.

35. IT IS FURTHER ORDERED pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, that the petition for reconsideration filed by Paging Systems, Inc. on August 23, 2002 IS GRANTED IN PART AND DENIED IN PART to the extent set forth above.

36. IT IS FURTHER ORDERED pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, that the petition for reconsideration filed by Warren C. Havens on August 26, 2002 IS DISMISSED to the extent set forth above.

37. IT IS FURTHER ORDERED pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, that the supplement to the opposition to petitions for reconsideration filed by Warren C. Havens on October 7, 2002 IS DISMISSED.

38. IT IS FURTHER ORDERED pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, that the reply to the supplement filed by Mobex Communications, Inc. on October 15, 2002 IS DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A – SUPPLEMENTAL FINAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act (RFA),⁹⁵ a Final Regulatory Flexibility Analysis (IRFA) was incorporated into the *Second Memorandum Opinion and Order and Fifth Report and Order*⁹⁶ in this proceeding. In view of the fact that we have adopted a further rule amendment in this *Third Memorandum Opinion and Order*, we have included this Supplemental Final Regulatory Flexibility Analysis (SFRFA). The present SFRFA conforms to the RFA.⁹⁷

A. Need for, and Objectives of the *Third Memorandum Opinion and Order*:

In this *Third Memorandum Opinion and Order*, we amend a rule regarding co-channel interference protection that was adopted in the *Fifth Report and Order*. We believe that this rule amendment supports the objectives that the Commission has established for this proceeding (*i.e.*, to increase the number and types of communications services available to the maritime community and improve the safety of life and property at sea, and that the potential benefits to the maritime community exceed any negative effects that may result from the promulgation of rules for this purpose).

B. Summary of Significant Issues Raised by Public Comments in Response to the FRFA:

We received no comments in response to the FRFA in the *Fifth Report and Order*. However, we continue to believe that the policies and rules adopted in the *Fifth Report and Order* will better enable small entities to compete for licenses in the AMTS band.

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply:

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁹⁸ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁹⁹ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹⁰⁰ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).¹⁰¹ A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."¹⁰²

⁹⁵ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

⁹⁶ *Second MO&O and Fifth R&O*, 17 FCC Rcd at 6724.

⁹⁷ See 5 U.S.C. § 604.

⁹⁸ 5 U.S.C. § 603(b)(3).

⁹⁹ 5 U.S.C. § 601(6).

¹⁰⁰ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

¹⁰¹ Small Business Act, 15 U.S.C. § 632 (1996).

¹⁰² 5 U.S.C. § 601(4).

The rules adopted in this proceeding will affect licensees using AMTS spectrum. In the *Third Report and Order* in this proceeding, the Commission defined the term "small entity" specifically applicable to public coast station licensees as any entity employing fewer than 1,500 persons, based on the definition under the Small Business Administration rules applicable to radiotelephone service providers.¹⁰³ Since the size data provided by the Small Business Administration does not enable us to make a meaningful estimate of the number of AMTS licensees that are small businesses, we have used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that only 12 radiotelephone firms out of a total of 1,178 such firms that operated in 1992 had 1,000 or more employees. There are three AMTS public coast station licensees and approximately thirteen high seas public coast station licensees. Based on the rules adopted in this proceeding, it is unlikely that more than seven licensees will be authorized in the future. Therefore, for purposes of our evaluations and conclusions in this SFRFA, we estimate that there are approximately twenty-three AMTS and high seas public coast station licensees that are small businesses, as that term is defined by the Small Business Administration.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements:

This *Third Memorandum Opinion and Order* imposes no new reporting, recordkeeping or other compliance requirements not previously adopted in this proceeding.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered:

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

The rule amendment adopted in this *Third Memorandum Opinion and Order* will have no significant economic impact on small entities. The Commission in this proceeding has considered comments on implementing broad changes to the maritime service rules. It has adopted alternatives which minimize burdens placed on small entities. In the *Fifth Report and Order*, it decided to adopt for AMTS the small business provisions that were adopted in the auction of VHF public coast spectrum. Specifically, the Commission has concluded that AMTS small businesses will receive a bidding credit of 25 percent and very small businesses will receive a bidding credit of 35 percent. It has defined small businesses as those entities, together with their affiliates and controlling interests, with not more than fifteen million dollars in average gross revenues for the preceding three years, and very small businesses as those entities, together with their affiliates and controlling interests, with not more than three million dollars in average gross revenues for the preceding three years.¹⁰⁴

¹⁰³ See Amendment of the Commission's Rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order*, PR Docket No. 92-257, 13 FCC Rcd 19853, 19893 (1998) (citing 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812 (now North American Industry Classification System (NAICS) Code 513322)).

¹⁰⁴ These small business size standards have been approved by the U.S. Small Business Administration, pursuant to Section 3 of the Small Business Act. See Letter from Aida Alvarez, Administrator, Small Business Administration, to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission (dated November 3, 2000) (approving size standards for AMTS and high seas public coast services); see also 15 U.S.C. § 632(a)(2) (establishment of size standards by federal agencies); 13 C.F.R. § 121.90(b) (promulgation of special size standards by federal agencies).

Report to Congress: The Commission will send a copy of the *Third Memorandum Opinion and Order*, including this SFRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.¹⁰⁵ In addition, the Commission will send a copy of the *Third Memorandum Opinion and Order*, including this SFRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the *Third Memorandum Opinion and Order* and SFRFA (or summaries thereof) will be published in the Federal Register.¹⁰⁶

¹⁰⁵ See 5 U.S.C. § 801(a)(1)(A).

¹⁰⁶ See 5 U.S.C. § 604(b).

APPENDIX B - FINAL RULES

Chapter I of Title 47 of the Code of Federal Regulations, Part 1 is amended as follows:

Part 80 - Stations in the Maritime Services

1. The authority citation for Part 80 continues to read as follows:

AUTHORITY: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.385 is amended by revising paragraph (b)(1) to read as follows:

§ 80.385 Frequencies for automated systems.

* * * * *

(b) * * *

(1) The AMTS geographic area licensee must locate its stations at least 120 kilometers from the stations of co-channel site-based AMTS licensees. Shorter separations between such stations will be considered by the Commission on a case-by-case basis upon submission of a technical analysis indicating that at least 18 dB protection will be provided to a site-based licensee's predicted 38 dBu signal level contour. The site-based licensee's predicted 38 dBu signal level contour shall be calculated using the F(50, 50) field strength chart for Channels 7-13 in § 73.699 (Fig. 10) of this chapter, with a 9 dB correction for antenna height differential. The 18 dB protection to the site-based licensee's predicted 38 dBu signal level contour shall be calculated using the F(50, 10) field strength chart for Channels 7-13 in § 73.699 (Fig. 10a) of this chapter, with a 9 dB correction factor for antenna height differential.

* * * * *

3. Section 80.475(a) is amended by adding subparagraphs (1) and (2) to read as follows:

§ 80.475 Scope of service of the Automated Maritime Telecommunications System (AMTS).

(a) * * *

(1) Applicants proposing to locate a coast station transmitter within 169 kilometers (105 miles) of a channel 13 TV station or within 129 kilometers (80 miles) of a channel 10 TV station or with an antenna height greater than 61 meters (200 feet), must submit an engineering study clearly showing the means of avoiding interference with television reception within the grade B contour, *see* § 80.215(h) of this chapter, unless the proposed station's predicted interference contour is fully encompassed by the composite interference contour of the applicant's existing system, or the proposed station's predicted interference contour extends the system's composite interference contour over water only (disregarding uninhabited islands).

(2) Additionally, applicants required to submit the above specified must give written notice of the filing of such applications(s) to the television stations which may be affected. A list of the notified television stations must be submitted with the subject applications.